

Title	Remote Public Access to Electronic Court Records in Extraordinary Criminal Cases (amend Cal. Rules of Court, rule 2073).
Summary	The proposed amendment to rule 2073 would, at the discretion of the presiding judge or his or her designee, allow remote (i.e., Internet) electronic access to selected court records in extraordinary criminal cases.
Source	Court Technology Advisory Committee
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Discussion	<p>Public interest in extraordinarily high publicity criminal cases presents significant challenges for the courts and court staff. There are often hundreds of requests for certain documents in these high-profile cases. Rule 2073 allows courts to provide remote electronic access to information in civil cases, but in criminal cases electronic access is generally available only in the courthouse. (Cal. Rules of Ct., rule 2073(c)(5).)</p> <p>The Judicial Council has adopted interim rule 2073.5, allowing courts with extraordinary high publicity cases to provide remote electronic access in limited circumstances. Rule 2073.5 is effective until January 1, 2005. Before the expiration of that rule, the Judicial Council will address whether to adopt a permanent rule allowing remote electronic access in high publicity criminal cases. This proposed rule and the interim rule recently adopted by the Judicial Council are substantially similar.</p> <p>Under this proposal, at the discretion of the presiding judge or his or her designee, the court may allow remote electronic access to selected documents in (1) extraordinary high publicity criminal cases where (2) responding to the requests would significantly burden court operations, and (3) the benefits of remote electronic access outweigh privacy interests of concerned parties, victims, witnesses, and court personnel. We specifically invite comment on whether the third factor is workable with respect to difficulty in quantifying these interests and balancing their respective weights.</p> <p>In making a determination whether to permit remote electronic access,</p>

under the rule the judge should consider:

- The privacy interests of the parties, victims, witnesses, and court personnel;
- The ability of the court to redact sensitive information from the records;
- The benefits and burdens on the parties; and
- The benefits to and burdens on the court.

Additionally, the rule provides that the court should, to the extent feasible, redact certain personal information from records prior to providing remote electronic access. The court would be also have the discretion to order parties to provide redacted copies of documents.

Finally, the proposed rule provides for a notice and comment period.

One alternative that could be included in the rule is the use of a password protected Web site to provide the remote electronic access. Such as system would ease burdens on the court by allowing remote electronic access, yet protect privacy by limiting access to the court documents. We would appreciate comments on this alternative.

We would also appreciate comments from courts and others regarding their actual experiences with the remote electronic access that is currently permitted under interim rule 2073.5.

Attachment

Rule 2073 of the California Rules of Court would be amended, effective January 1, 2005, to read:

Rule 2073. Public access

(a) – (d) * * *

(e) [Remote electronic access allowed in extraordinary criminal cases]

Notwithstanding (b)(2), the presiding judge of the court, or a judge assigned by the presiding judge, may exercise discretion, subject to (e)(1), to permit electronic access to all or a portion of the public court records in an individual criminal case if (1) the number of requests for access to documents in the case is extraordinarily high, (2) responding to those requests would significantly burden the operations of the court, and (3) the benefits of remote electronic access outweigh privacy interests of the parties, victims, witnesses, and court personnel. An individualized determination must be made in each case in which such remote electronic access is provided.

(1) In exercising discretion under (e), the judge should consider the relevant factors, such as:

(A) The privacy interests of parties, victims, witnesses, and court personnel, and the ability of the court to redact sensitive personal information;

(B) The benefits and burdens on the parties in allowing remote electronic access, including possible impacts on jury selection; and

(C) The benefits to and burdens on the court and court staff.

(2) The court should, to the extent feasible, redact the following information from records to which it allows remote access under (e): driver license numbers; dates of birth; social security numbers; Criminal Identification and Information and National Crime Information numbers; addresses and phone numbers of parties, victims, witnesses, and court personnel; medical or psychiatric information; financial information; account numbers; and other personal identifying information. The court may order any party who files a document containing such information to provide the court with both an original unredacted version of the document for filing in the court file and a redacted version of the document for

remote electronic access. No juror names or other juror identifying information may be provided by remote electronic access. This subdivision does not apply to any document in the original court file; it applies only to documents that are available by remote electronic access.

- (3) Five days' notice must be provided to the parties and the public before the court makes a determination to provide remote electronic access under this rule. Notice to the public may be accomplished by posting notice on the court Web site. Any person may file comments with the court for consideration, but no hearing is required.
- (4) The court's order permitting remote electronic access must specify which court records will be available by remote electronic access and what categories of information are to be redacted. The court is not required to make findings of fact. The court's order must be posted on the court's Web site and a copy sent to the Judicial Council.

(ef) * * *

(fg) * * *

(gh) * * *

(hi) * * *

Advisory Committee Comment

The rule allows a level of access to all electronic records that is at least equivalent to the access that is available for paper records and, for some types of records, is much greater. At the same time, it seeks to protect legitimate privacy concerns.

Subdivision (c) excludes certain records (those other than the register, calendar, and indexes) in specified types of cases (notably criminal, juvenile, and family court matters) from remote electronic access. The committee recognized that while these case records are public records and should remain available at the courthouse, either in paper or electronic form, they often contain sensitive personal information. The court should not publish that information over the Internet. However, the committee also recognized that the use of the Internet may be appropriate in certain criminal cases of extraordinary public interest where information regarding the case will be widely disseminated through the media. In such cases,

posting of selected nonconfidential court records, redacted where necessary to protect the privacy of the participants, may provide more timely and accurate information regarding the court proceedings, and may relieve substantial burdens on court staff in responding to individual requests for documents and information. Thus, under subdivision (e), if the presiding judge makes individualized determinations in a specific case, certain records in criminal cases may be made available over the Internet.

Subdivisions (ef) and (fg) limit electronic access to records (other than the register, calendars, or indexes) to a case-by-case basis and prohibit bulk distribution of those records. These limitations are based on the qualitative difference between obtaining information from a specific case file and obtaining bulk information that may be manipulated to compile personal information culled from any document, paper, or exhibit filed in a lawsuit. This type of aggregate information may be exploited for commercial or other purposes unrelated to the operations of the courts, at the expense of privacy rights of individuals.